

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 11757/2024

1. His Highness Sawai Tej Singh S/o Late Shri Jaisingh Ji, Aged About 95 Years, R/o 18, Alwar House, Orangjeb Road, New Delhi (Ex-Emperor Alwar State) Through Amarraj Lal S/o Late Shri I.m. Lal, R/o N-128, Panchsheel Park, New Delhi.
- 1/1 Jitendra Singh S/o Late Shri Yuvraj Pratap Singh, R/o Phool Bagh Palace, Alwar, Tehsil And District Alwar, Rajasthan.

----Petitioner/ Defendant

Versus

1. Banwarilal Singhal S/o Harish Chand Jain, Aged About 42 Years, R/o 2/33, Scheme No. 10 B, Alwar, Tehsil And District Alwar At Present Residing At 17-A Moti Dungari, Alwar, Tehsil And District Alwar, Rajasthan.
2. Rajesh Singhal S/o Shri Harish Chand Jain, Aged About 40 Years, R/o 2/33, Scheme No. 10-B, Alwar, Tehsil And District Alwar, At Present Residing At 17-A, Moti Dungari, Alwar, Tehsil And District Alwar, Rajasthan.

----Respondents/ Plaintiffs

3. Smt. Meenakshi Kumari D/o Late Shri Yuvraj Pratap Singh W/o Shri Suryaveer Singh, R/o Royal Academy, Near Phool Bagh Palace, Alwar, Tehsil And District Alwar.
4. Yashwant Singh S/o Late Shri Sawai Tej Singh, Aged About 68 Years, R/o 20, Orangjeb Road, New Delhi.
5. Smt. Pratap Kumari D/o Late Shri Sawai Tej Singh, Aged About 71 Years, R/o F-164, Malayacha Marg, Chanakyepuri, New Delhi (Since Deceased).
6. Smt. Mankumari D/o Late Shri Sawai Tej Singh, Aged About 69 Years, W/o His Highness Shri Manohar Singh Jadeja, Ranjeet Villas Palace, Rajkot, Gujarat.
7. Smt. Bhanukumari D/o Late Shri Sawai Tej Singh W/o Late Parakarm Singh, Aged About 67 Years, R/o B-26, Green Park, New Delhi- 110006, 18, Orangjeb Road, New Delhi-110003.
8. Amarraj Lal S/o Late Shri I.m. Lal, R/o 128, Panchsheel Park, New Delhi Power Of Attorney Holder His Highness

Sawai Tej Singh S/o Late Shri Jai Singh Ji, Aged About 95 Years, R/o 18, Alwar House, Orangjeb Road, New Delhi (Ex-Emperor Alwar State) (Since Deceased).

9. Shri Jagdish Thada Advocate, 7 B 19, Mahaveer Nagar-Iii Kota, Raj., Guardian Ad Litem His Highness Sawai Tej Singh S/o Late Shri Jai Singh Ji, Aged About 95 Years, R/o 18, Alwar House, Orangjeb Road, New Delhi (Ex-Emperor Alwar State).

----Proforma-Respondents/ Defendants

For Petitioner(s) : Mr. Gajendra Singh Rathore

For Respondent(s) :

HON'BLE MR. JUSTICE SUDESH BANSAL
Order

31/07/2024

1. By way of filing instant writ petition under Article 227 of the Constitution of India, challenge has been made to the interlocutory order dated 29.05.2024 passed in Civil Suit No.34/10/11 (Banwarilal & Ors. Vs. His Highness Sawai Tej Singh) by the Court of Additional District Judge No.3, Alwar, allowing plaintiffs' application under Section 65 of the Evidence Act to adduce the secondary evidence of two Power of Attorney dated 09.04.2005 and 30.09.2004.

2. Heard counsel for petitioner-defendant and perused the record.

3. It appears from the record that respondents-plaintiffs instituted civil suit for specific performance of an agreement dated 18.04.2005 against Mr. Sawai Tej Singh and stated that this agreement to sell was executed by one Mr. Amarraj Lal, being Power of Attorney holder of Mr. Sawai Tej Singh. Plaintiffs produced two Power of Attorney dated 09.04.2005, notarized and 30.09.2004, registered Power of Attorney, allegedly executed by

Mr. Sawai Tej Singh in favour of Mr. Amarraj Lal and during course of evidence, since original Power of Attorney were not produced on record, therefore, an application under Section 65 of the Evidence Act was filed, seeking permission to adduce the secondary evidence.

4. This application has been allowed by the trial Court vide order impugned dated 29.05.2024.

5. The contention of counsel for petitioner-defendant is that both Power of Attorney are fake, forged and collusive documents as well as the earlier application filed by plaintiffs seeking permission to produce the secondary evidence on such Power of Attorney has already been dismissed by the trial Court vide order dated 02.04.2024 (Annex.7), therefore, the trial Court committed illegality and jurisdictional error by allowing to produce the secondary evidence.

6. Having heard counsel for petitioner-defendant, this Court finds that the trial Court has clearly observed in the order impugned that at the time of passing the order dated 02.04.2024, plaintiffs have not made compliance of the pre-requirements of Sections 65 & 66 of the Evidence Act. Neither any notice was given to respondents-defendants nor efforts were made to procure the original Power of Attorney, but after passing of the order dated 02.04.2024, plaintiffs have made compliance of Sections 65 & 66 of the Evidence Act, therefore, the previous order dated 02.04.2024, does not operate as res judicata to consider and allow the second application under Section 65 of the Evidence Act.

7. As far as objection of petitioner-defendant is that documents of Power of Attorney are fake and forged, the trial Court has

clearly observed that by allowing the secondary evidence and exhibiting the Power of Attorney in evidence, does not waive such objection and such objection can be considered by the trial Court while considering documents of Power of Attorney on merits at the time of deciding the suit.

8. In the opinion of this Court, the existence of the original Power of Attorney have not been disputed by the petitioner-defendant and the trial Court has considered that essential ingredients before permitting the secondary evidence on the Power of Attorney, have been complied with. The foundational evidence, seeking permission to adduce the secondary evidence, is available on record and after being satisfied with such foundational evidence, the trial Court has granted permission for the secondary evidence. In such view, the impugned order does not suffer from any perversity and jurisdictional error, nor leads to failure of justice.

9. For reasons stated hereinabove, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India, does not find the present writ petition to be a fit case to interfere with the impugned order dated 29.05.2024.

10. Accordingly, the writ petition is hereby dismissed.

11. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

RONAK JAIMAN/34